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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TODD R.G. HILL, et al.

Plaintiffs,

v.

THE BOARD OF DIRECTORS, OFFICERS,
AND AGENTS AND INDIVIDUALS OF
PEOPLES COLLEGE OF LAW, et al.,

Defendants.

Case No. 2:23-cv-01298-JLS-BFM

**STATE BAR DEFENDANTS’
OBJECTIONS TO INTERIM REPORT
AND RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE**

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Pursuant to 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72(b), and Local Civil Rule 72-2, the State Bar Defendants respectfully submit the following objections to the Interim Report and Recommendation issued by United States Magistrate Judge Brianna Fuller Mircheff on April 23, 2024 (the “Report”), Dkt. 132.¹

I. INTRODUCTION

Plaintiff Todd Hill (“Plaintiff”) attended the Peoples College of Law, an unaccredited law school that is registered with and regulated by the State of California’s Committee of Bar Examiners. Since initiating the action, Plaintiff has filed a 410-page initial complaint (Dkt. 1), a 75–page First Amended Complaint (Dkt. 38), and a 190-page Second Amended Complaint (Dkt. 55) alleging a variety of claims against the State Bar Defendants and other defendants. At this juncture, the Court has reviewed three iterations of Plaintiff’s pleadings and twice dismissed Plaintiff’s prior complaints on Rule 8 grounds as being “prolix, rambling, and excessively long.” Dkt. 45 at 8.

As detailed in the Report, the Magistrate Judge extensively and thoroughly reviewed Plaintiff’s Second Amended Complaint (“SAC”) and recommended granting in part and denying in part the State Bar Defendants’ Motion to Dismiss. Specifically, the Magistrate Judge recommended that Plaintiff’s claims against the State Bar Defendants be dismissed with prejudice due to the State Bar Defendants’ sovereign immunity *except* for Plaintiff’s twelfth and thirteenth causes of action based on Title IX and the sixth, seventh, twelfth, and thirteenth causes of action to the extent those claims seek declaratory or injunctive relief. Dkt. 132 at 17–23. The Magistrate Judge also recommended that these remaining claims (and the Second Amended

¹ The State Bar Defendants refer to Defendants the State Bar of California; the Office of Chief Trial Counsel of the State Bar of California; the Board of Trustees of the State Bar of California; the Office of Admissions of the State Bar of California; Leah Wilson; Suzanne Grandt; Vanessa Holton; Ellin Davtyan; Louisa Ayrapetyan; Alfredo Hernandez; Juan De La Cruz; Natalie Leonard; Donna Hershkowitz; Elizabeth Hom; Jay Frykberg; Gina Crawford; Larry Kaplan; Hon. James Herman; Paul Kramer; Caroline Holmes; Imelda Santiago; Nathalie Hope; Steve Mazer; Yun Xiang; Joan Randolph; Jean Krasilnikoff; Enrique Zuniga; Robert Brody; George Cardona; Melanie Lawrence; Anthony Garcia; Shataka Shores-Brooks; Eli Morgenstern; Ruben Duran; Brandon Stallings; Mark Broughton; Hailyn Chen; Jose Cisneros; Gregory Knoll; Melanie Shelby; Arnold Sowell, Jr.; Mark Toney; Amy Nunez; Audrey Ching; Lisa Cummins; Tammy Campbell; Kim Wong; and Devan McFarland.

1 Complaint in general) be dismissed with leave to amend based on Plaintiff's failure to comply
2 with Rule 8. *Id.* at 12–17. While the State Bar Defendants agree with the Magistrate Judge's
3 recommendation these claims should be dismissed for once again failing to comply with Rule 8,
4 the State Bar Defendants respectfully submit that Plaintiff's sixth, seventh, twelfth, and
5 thirteenth causes of action as against the State Bar Defendants should be dismissed with
6 prejudice. The State Bar Defendants also respectfully submit that the various departments of the
7 State Bar that have been improperly named as defendants in this action should be dismissed with
8 prejudice.

9 First, Plaintiff's twelfth and thirteenth causes of action, which assert Title IX claims,
10 should be dismissed with prejudice because a Title IX claim cannot be brought against an
11 individual defendant—the only defendants named in Plaintiff's claims—nor can a Title IX
12 violation be used as the basis of a Section 1983 claim as a way of circumventing Title IX's
13 restriction on individual liability. Moreover, Plaintiff does not allege an intentional violation by
14 the State Bar or that a State Bar official had actual knowledge of the purported discrimination
15 and failed to respond, or that the State Bar receives federal funding as required to state a Title IX
16 claim. Thus, there is no basis to allow amendment to bring such claims as against the State Bar
17 itself.

18 Second, Plaintiff's sixth and seventh causes of action, which assert a violation of 42
19 U.S.C. § 1981 by the State Bar Defendants, should be dismissed with prejudice because the SAC
20 is devoid of any allegations of racial animus or the existence of a contract despite Plaintiff
21 having been given multiple opportunities to amend these claims. Where, as here, the SAC is
22 devoid of any factual allegations that could plausibly support a Section 1981 claim, dismissal
23 with prejudice is appropriate.

24 Third, the sixth, seventh, twelfth, and thirteenth causes of action should be dismissed
25 with prejudice because Plaintiff does not seek prospective relief, and thus the *Ex parte Young*
26 exception to Eleventh Amendment immunity does not apply here.

27 Fourth, the SAC purports to name several departments of the State Bar—the Office of
28 Chief Trial Counsel, the Board of Trustees of the State Bar of California, the Office of

Admissions of the State Bar of California, and the Office of General Counsel—as defendants even though these departments of the State Bar lack capacity to be sued. These defendants should be dismissed with prejudice.

Accordingly, this Court, in conducting its de novo review, should reject those portions of the Report and dismiss the sixth, seventh, twelfth, and thirteenth causes of action with prejudice, and dismiss the State Bar’s Office of Chief Trial Counsel, the Board of Trustees of the State Bar of California, the Office of Admissions of the State Bar of California, and the Office of General Counsel from this action.

II. LEGAL STANDARD

A district court reviews de novo all portions of a magistrate judge’s recommendation to which a party has properly objected. *See* Fed. R. Civ. P. 72. The district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge,” or may “receive further evidence or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1)(C). “The statute makes it clear that the district judge must review the magistrate judge’s findings and recommendations de novo if objection is made, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *see also* 12 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 3070.2 (2d ed. 2017) (a district conducting de novo review may not simply “rubber stamp the recommendation of a magistrate”).

III. ARGUMENT

A. The Twelfth and Thirteenth Causes of Action Should Be Dismissed with Prejudice Because Plaintiff Cannot Assert a Title IX Claim Against the State Bar Defendants

The twelfth and thirteenth causes of action, which assert violations of 42 U.S.C. § 1983 and Title IX by various individual State Bar Defendants, should be dismissed with prejudice because a Title IX claim cannot be brought against an individual defendant—the only defendants identified in these claims—nor can Section 1983 be used as a vehicle to assert liability against an individual defendant based on an underlying Title IX violation. Moreover, a Title IX claim cannot be brought as against the State Bar because Plaintiff does not allege an intentional

1 violation by the State Bar or that a State Bar official had actual knowledge of the purported
 2 discrimination and failed to respond, or that the State Bar receives federal funding—all required
 3 elements to state a Title IX claim.

4 As the Report recognizes, Title IX bars sex-based discrimination by educational
 5 institutions and does not authorize suit against individuals. *See* Dkt. 132 at 21, n.5. The Report
 6 correctly concludes that “Plaintiff’s Title IX claims name only individual State Bar defendants
 7 who cannot be sued under Title IX” and that Plaintiff’s claims “also do not clearly allege
 8 discrimination on the basis of sex.” *Id.*; *see also Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S.
 9 246, 257 (2009) (“Title IX reaches institutions and programs that receive federal funds. . . but it
 10 has consistently been interpreted as not authorizing suit against school officials, teachers, and
 11 other individuals.”); *Al-Rifai v. Willows Unified Sch. Dist.*, 469 F. App’x 647, 649 (9th Cir.
 12 2012) (“Title IX does not create a private right of action against school officials, teachers, and
 13 other individuals who are not direct recipients of federal funding.”). The Report has already
 14 concluded that Title IX claims cannot be asserted against an individual defendant. *See* Dkt. 132
 15 at 21, n.5. Accordingly, dismissal with prejudice of the twelfth and thirteenth causes of action,
 16 which allege Title IX violations by individual State Bar Defendants, is the only ruling that is
 17 consistent with the Report’s recommendation.

18 Nor can Plaintiff bring a Section 1983 claim against the individual State Bar Defendants
 19 based on an alleged underlying violation of Title IX, for the same reason—Title IX claims
 20 cannot be asserted against individuals. *See Fitzgerald*, 555 U.S. at 257; *Al-Rifai*, 469 F. App’x at
 21 649. Courts previously addressing this exact issue have held that a litigant may not use Section
 22 1983 as an “end run” around Title IX’s restriction limiting liability to direct recipients of federal
 23 funding. *See, e.g., Doe v. Napa Valley Unified Sch. Dist.*, 2018 WL 4859978, at *5 (N.D. Cal.
 24 Apr. 24, 2018) (citation and internal quotation marks omitted) (“Plaintiff may only bring his
 25 Title IX claim against the [school district], and allowing him to bring a Section 1983 claim
 26 against the Individual District Defendants would permit an end run around Title IX’s explicit
 27 language limiting liability to funding recipients.”); *Doe v. Sch. Bd. of Broward Cnty., Fla.*, 604
 28 F.3d 1248, 1266 n. 12 (11th Cir. 2010) (“[P]ermitt[ing] plaintiffs to use § 1983 to assert an

individual Title IX claim ‘would permit an end run around Title IX’s explicit language limiting liability to funding recipients’ and is therefore prohibited”).

Additionally, Plaintiff should not be granted leave to amend to state a Title IX claim directly against the State Bar as an entity because the SAC is devoid of any allegations that even plausibly suggest that Plaintiff was denied participation on the basis of his sex, that the State Bar intentionally discriminated against him or was on notice of such discrimination, let alone that the State Bar receives federal funding, as required to state a Title IX claim. Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681. “Thus, for an entity to be liable under Title IX, it must be both a ‘program or activity’ as defined under § 1687, *and* a recipient of ‘Federal financial assistance.’” *A. B. by C.B. v. Hawaii State Dep’t of Educ.*, 386 F. Supp. 3d 1352, 1355 (D. Haw. 2019) (citing 20 U.S.C. §§ 1681, 1687; emphasis added); *see also Doe*, 2018 WL 4859978, at *4 (“a plaintiff can only bring a Title IX claim against institutions and programs that receive federal funds.”).

Moreover, because Title IX prohibits only intentional discrimination (*see Jackson*, 544 U.S. at 178), a Title IX claim does not lie against an entity where “liability rests solely on principles of vicarious liability or constructive notice.” *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 288 (1998); *see also Mansourian v. Regents of Univ. of California*, 602 F.3d 957, 966 (9th Cir. 2010) (damages are precluded for unintentional violations of Title IX, which was enacted under Congress’s spending authority). In cases that do not involve the official policy of an entity, there is no damages remedy under Title IX unless an official who “has authority to address the alleged discrimination and to institute corrective measures” at the entity “has actual knowledge of discrimination in the recipient’s programs and fails adequately to respond.” *Gebser*, 524 U.S. at 290.

Here, Plaintiff’s Title IX claims not only fail to plausibly allege any sex discrimination, but also do not allege an intentional violation by the State Bar or that a State Bar official had actual knowledge of the purported discrimination and failed to respond. Instead, Plaintiff’s

1 allegations *assume* that liability should be imposed on the State Bar under a vicarious liability or
 2 constructive notice theory—a theory of liability that is squarely foreclosed by *Gebser*. Nor can
 3 Plaintiff amend his claims to allege the State Bar has a policy of intentional discrimination, given
 4 that the SAC alleges the individual defendants “violated State Bar guidelines and regulations.”
 5 SAC ¶ 542. The SAC also lacks any allegations that the State Bar receives federal funding. *See*
 6 *generally* SAC.

7 Under these circumstances where Plaintiff cannot state claims against the individual State
 8 Bar Defendants and where the SAC lacks any allegations even suggesting that the State Bar itself
 9 could plausibly be liable for a Title IX violation, the twelfth and thirteenth causes of action
 10 should be dismissed with prejudice. *See Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th
 11 Cir. 2010) (a district court may deny leave to amend “if it determines that allegation of other
 12 facts consistent with the challenged pleading could not possibly cure the deficiency. . . or if the
 13 plaintiff had several opportunities to amend its complaint and repeatedly failed to cure
 14 deficiencies.”) (citations and internal quotation marks omitted).

15 **B. The Sixth and Seventh Causes of Action Should Be Dismissed with Prejudice**
 16 **Because Plaintiff Cannot State a Claim for Violation of 42 U.S.C. § 1981**

17 The sixth and seventh causes of action should also be dismissed with prejudice because
 18 there are no factual allegations of racial animus or impairment of contractual rights that could
 19 support a claim for violation of 42 U.S.C. § 1981. Despite having been given three opportunities
 20 to amend his complaint to cure deficiencies in his pleadings, Plaintiff has not demonstrated that
 21 he can successfully amend these claims.

22 “42 U.S.C. § 1981 provides a cause of action for race discrimination when such
 23 discrimination occurs in the making and enforcement of contracts.” *Delacruz v. State Bar of*
 24 *California*, 2018 WL 3077750, at *11 (N.D. Cal. Mar. 12, 2018). A plaintiff cannot state a claim
 25 under Section 1981 “unless he has (or would have) rights under the existing (or proposed)
 26 contract that he wishes ‘to make and enforce.’” *Domino’s Pizza, Inc. v. McDonald*, 546 U.S.
 27 470, 479–80 (2006) (citing 42 U.S.C. § 1981(a)). Thus, to state a claim for violation of Section
 28 1981, a plaintiff must “identify injuries flowing from a racially motivated breach of their own
 contractual relationship.” *Id.* at 480.

1 Here, the SAC is devoid of any factual allegations that there was ever any racial animus
 2 directed toward Plaintiff by the State Bar Defendants or that a contractual relationship between
 3 the parties exists. *See generally* SAC. Instead, the sixth and seventh causes of action, as best as
 4 the State Bar Defendants understand them, allege that the State Bar Defendants are engaged in an
 5 alleged scheme with the Peoples College of Law to deprive Plaintiff of a law degree. *See* SAC
 6 ¶¶ 344-70. Plaintiff has already been given three opportunities to amend his complaint—
 7 including his section 1981 claims, which have been stated in each of his amended pleadings, *see*
 8 Dkt. 1 at 6–10, 13–14, 34, 78, 125, 186; Dkt. 38 at 48–52—to include a short and plain statement
 9 of relevant facts supporting his claims. Yet, in each amended pleading, Plaintiff has not stated
 10 any facts to plausibly allege racial animus or the existence of a contractual relationship between
 11 Plaintiff and the State Bar Defendants.

12 Under such circumstances, dismissal with prejudice is appropriate. *See Telesaurus*, 623
 13 F.3d at 1003 (a district court may deny leave to amend “if it determines that allegation of other
 14 facts consistent with the challenged pleading could not possibly cure the deficiency. . . or if the
 15 plaintiff had several opportunities to amend its complaint and repeatedly failed to cure
 16 deficiencies.”) (citations and internal quotation marks omitted); *Knapp v. Hogan*, 738 F.3d 1106,
 17 1110 (9th Cir. 2013) (“When a litigant knowingly and repeatedly refuses to conform his
 18 pleadings to the requirements of the Federal Rules, it is reasonable to conclude that the litigant
 19 simply cannot state a claim.”).² For example, in *Delacruz*, the Northern District of California
 20 dismissed a section 1981 claim with prejudice where the “FAC fails to allege any facts that
 21 would plausibly suggest that the individual State Bar Defendants took any discriminatory actions
 22 because of [plaintiff’s] race and to the impairment of his contractual rights” and where the “FAC
 23 does not contain factual allegations that support an inference that [plaintiff’s] contractual rights
 24

25
 26 ² Apart from the total absence of factual allegations supporting a Section 1981 claim, in the sixth
 27 cause of action, Plaintiff seeks admission to the federal bar. *See* SAC ¶¶ 344-56. The Report
 28 recommends that this cause of action be dismissed with prejudice because the Court lacks
 authority to grant the relief requested. *See* Dkt. 132 at 24. Because, as noted by the Court, the
 Court lacks authority to order Plaintiff’s admission to the federal bar, the sixth cause of action as
 asserted against the State Bar Defendants should be dismissed with prejudice.

1 were impaired.” 2018 WL 3077750, at *11. Similarly, here, the SAC lacks any allegations to
2 plausibly suggest that Plaintiff could bring such claims against the State Bar Defendants.

3 Accordingly, the sixth and seventh causes of action should be dismissed with prejudice.

4 **C. The Sixth, Seventh, Twelfth, and Thirteenth Causes of Action Should Be**
5 **Dismissed with Prejudice Because *Ex Parte Young* Does Not Apply Here**

6 The sixth, seventh, twelfth, and thirteenth causes of action should be dismissed with
7 prejudice for the additional reason that to the extent these claims are asserted against individual
8 State Bar Defendants in their official capacities, the *Ex parte Young* exception to Eleventh
9 Amendment immunity does not apply here because Plaintiff does not seek prospective relief.

10 For the *Ex parte Young* exception to Eleventh Amendment immunity to apply, a plaintiff
11 must allege “an ongoing violation of federal law for which she seeks prospective injunctive
12 relief.” *R. W. v. Columbia Basin Coll.*, 77 F.4th 1214, 1221 (9th Cir. 2023). That the plaintiff
13 seek *prospective* relief is key to this inquiry. *See Verizon Maryland, Inc. v. Pub. Serv. Comm’n of*
14 *Maryland*, 535 U.S. 635, 645 (2002) (quoting *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S.
15 261, 296 (1997) (“In determining whether the doctrine of *Ex parte Young* avoids an Eleventh
16 Amendment bar to suit, a court need only conduct a ‘straightforward inquiry into whether [the]
17 complaint alleges an ongoing violation of federal law and seeks relief properly characterized as
18 prospective.’”). This is because the “Eleventh Amendment does not permit retrospective
19 declaratory relief.” *Lund v. Cowan*, 5 F.4th 964, 969–70 (9th Cir. 2021). “[R]elief that in essence
20 serves to compensate a party injured in the past by an action of a state official in his official
21 capacity that was illegal under federal law is barred even when the state official is the named
22 defendant.” *Papasan v. Allain*, 478 U.S. 265, 278 (1986).!

23 Here, Plaintiff seeks various forms of relief under the sixth, seventh, twelfth, and
24 thirteenth causes of action, including automatic admittance to the federal bar, and unspecified
25 “declaratory, injunctive, and monetary relief.” SAC ¶¶ 344–70, 533–57. As to the State Bar
26 Defendants, he asks that the Court grant him his Juris Doctorate for delivery to the State Bar (*id.*
27 at ¶ 573) and have this Court declare that the State Bar has a “threshold duty to determine the
28 ‘actual costs’ needed to provide law students in all California districts with the opportunity to

1 obtain a sound basic legal education” (*id.* at ¶ 575). This relief is plainly retrospective, as he is
2 seeking redress for past alleged harms. Because Plaintiff does not seek prospective injunctive
3 relief, the sixth, seventh, twelfth, and thirteenth causes of action should be dismissed with
4 prejudice.

5 **D. Departments of the State Bar Must Be Dismissed From the Action Because**
6 **They Lack Capacity to Be Sued**

7 Finally, the SAC purports to name several departments of the State Bar—the Office of
8 Chief Trial Counsel, the Board of Trustees of the State Bar of California, the Office of
9 Admissions of the State Bar of California, and the Office of General Counsel—as defendants
10 without naming them under any specific cause of action. *See generally* SAC. Although the
11 Report acknowledges that these departments may not have the capacity to be sued, the Report
12 errs by holding that the Court need not decide this issue based on its finding that the Eleventh
13 Amendment bars Plaintiff’s claims against the State Bar. Dkt. 132 at 18, n.2. As explained
14 above, the Report does not hold that Plaintiff’s claims are categorically barred by the Eleventh
15 Amendment, and grants Plaintiff leave to amend the twelfth and thirteenth causes of action based
16 on Title IX on the ground that sovereign immunity as to such claims has been abrogated. Dkt.
17 132 at 17–23. Here, the State Bar’s Office of Chief Trial Counsel, the Board of Trustees of the
18 State Bar of California, the Office of Admissions of the State Bar of California, and the Office of
19 General Counsel should be dismissed from this action because these departments lack the legal
20 capacity to be sued.

21 “Fed. Rule Civ Pro. 17(b) requires that defendants named in any lawsuit possess the legal
22 capacity to be sued.” *Quansah v. IBM Corp.*, 1994 U.S. Dist. LEXIS 19499, at *9 (N.D. Cal.
23 Sep. 27, 1994). Capacity to sue or be sued for a corporation is governed by the laws under which
24 it was organized. Fed. R. Civ. P. 17(b)(2); *see also Brown v. County of Solano*, 2022 WL
25 493080, at *1 (E.D. Cal. Feb. 17, 2022) (California law determines whether a subsidiary of a
26 public entity has capacity to be sued). As set forth in the State Bar Act, only the State Bar—not
27 the Office of Chief Trial Counsel, Board of Trustees, Office of Admissions, or Office of General
28 Counsel—has the capacity to be sue and be sued. Bus. & Prof. Code § 6001. “[A] named

defendant is not a proper party if the defendant is simply ‘part of’ a public entity, and where any claim against defendant would need to be alleged against that public entity.” *Brown*, 2022 WL 493080, at *2; *Quansah*, 1994 U.S. Dist. LEXIS 19499, at *9 (applying the same reasoning to departments of corporations). Accordingly, the Office of Chief Trial Counsel, the Board of Trustees, the Office of Admissions, and the Office of General Counsel should all be dismissed from this matter.

IV. CONCLUSION

For the foregoing reasons, the State Bar Defendants respectfully object to the following portions of the Magistrate Judge’s Findings and Recommendation: (1) recommending that the twelfth and thirteenth causes of action be dismissed with leave to amend even though a Title IX claim cannot be brought against an individual defendant or used as the underlying violation for a Section 1983 claim, the SAC does not allege an intentional Title IX violation or knowledge by the State Bar and its failure to act, and the SAC lacks any allegation of the State Bar receiving federal funding (Dkt. 132 at 19–23); (2) recommending that the sixth and seventh causes of action be dismissed with leave to amend despite the SAC lacking any allegations to support a claim for violation of 42 U.S.C. § 1981 (Dkt. 132 at 19–23); (3) recommending that the sixth, seventh, twelfth, and thirteenth causes of action be dismissed with leave to amend under *Ex parte Young* despite Plaintiff not seeking any prospective injunctive relief (Dkt. 132 at 18–23); and (4) recommending that the Court need not address the question of whether departments of the State Bar have capacity to be sued (Dkt. 132 at 17–23). The State Bar Defendants’ Motion to Dismiss should be granted in its entirety, Plaintiff’s sixth, seventh, twelfth, and thirteenth causes of action dismissed without leave to amend, and the Office of Chief Trial Counsel, the Board of Trustees, the Office of Admissions, and the Office of General Counsel be dismissed with prejudice.

Dated: May 7, 2024

Respectfully submitted,

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